

EXHIBIT A



hogant001@hawaii.rr.com
04/21/2004 12:27 PM

To Damian Capozzola/Los Angeles/Kirkland-Ellis@K&E
cc "wayneberry@hotmail.com" <wayneberry@hotmail.com>
bcc
Subject Berry Admin. Claim

April 21, 2004

Dear Mr. Capozzola:

Re: Berry Admin. Claim.

We are about to file Mr. Berry's admin claim for post-petition infringement charges incurred to date. We will reserve his right to add to this figure in the future until the infringement ceases. We are going to be relying on the information that Fleming has provided in the Bankruptcy case to arrive at the total number of containers that are shipped through his system.

As you may be aware, Mr. Berry presently charges \$115 per ocean container shipped through his system. Based on the information Fleming disclosed in the Bankruptcy, its total number of containers shipped is no less than 400 per week or 20800 annually. We believe this number is actually shy one hundred containers a week.

Based on that figure we arrive at a per diem container count of 56.9863 containers per day. That makes a unpaid license fee of \$6,553.4245 per day that Mr. Berry is entitled to as actual damages under Section 504(a)(1). There have been 388 days since the commencement of the case on April 1st last year, that makes \$2,542,728.70 accrued administrative claim for unpaid license fee to date.

Mr. Berry also claims the infringer's profit for that unlicensed use under Section 504(a)(1) and (b). Based on his business records that profit is \$1,763 per container. That is \$100,466.84 per diem. Based on the 388 days, that equals another \$38,981,133 accrued to date. Minus the \$1,000,000 in overhead (that Fleming doesn't have to pay because that is being paid by C&S) and minus the licensing fee (to avoid duplicating damages) the total claim is \$35,438,405 as of today.

We know how important it is to Fleming, its creditors and the Court to have these figures to adequately review the plan's feasibility so we will work to have it filed and served on the notice parties in advance of May 4, 2004.

If Fleming disputes the underlying factual basis (i.e. container counts, profits and overhead) we recommend that we begin discovery immediately to resolve these narrow issues. We can do it all in the Hawaii litigation unless you are comfortable with our numbers.

I know these numbers may seem a bit high, but in light of the recent trend to saddle 12 year-olds with thousands of dollars of infringement penalties for downloading some songs, they seem proportionate from an equitable perspective especially when applied to willful infringement by a large company done for financial gain measured in the hundreds of millions of dollars.

If you have any questions or concerns please feel free to call me.

/s/Tim Hogan

Exhibit 9
Berry
Date 4-1-04
C.P.